

1 Tony H. Ashtiani  
2 P.O.Box 12723  
3 Tamuning Guam 96931  
4 671-688-4844  
5 671-653-5575

6 UNITED STATES DISTRICT COURT  
7 TERRITORY OF GUAM

8 Tony H. Ashtiani, )  
9 Plaintiff, ) Civil Case No.: 02-00032  
10 v. )  
11 Continental Micronesia Inc, ) PLAINTIFF'S OPPOSITION TO  
12 Db, Continental Micronesia, ) DEFENDANT CONTINENTAL  
13 Continental Airlines, ) MICRONESIA INC'S MOTION FOR  
14 Defendant ) SANCTION UNDER FEDERAL RULE OF  
15 ) CIVIL PROCEDURE RULE 11.  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )

18 Plaintiff Ashtiani respectfully files this opposition to defendant  
19 continental Micronesia's Motion for Sanction. Plaintiff submits that  
20 contrary to defendant's assertion it now brings this motion during pre  
21 trial time in bad faith as a harassing and diversionary tactic upon a  
22 pro se plaintiff who is trying to prepare for trial.  
23  
24  
25

ORIGINAL

1 As stated in subdivisions (b) and (c) Fed Rule of Civil Procedure  
2 Rule 11. "the filing of a motion for sanctions is itself subject to the  
3 requirements of the rule and can lead to sanctions. However service of  
4 a cross motion under Rule 11 should rarely be needed since under the  
5 revision the court may award to the person who prevails on a motion  
6 under Rule 11- whether the movant or the target of the motion-  
7 reasonable expenses, including attorney's fees, incurred in opposing  
8 the motion.  
9

10  
11 Upon close examination of Exhibit A of the defendants' motion  
12 there are documents listed with dates from January 22, 27, 29, 30, to  
13 February 5, 2004 which all of these documents are within the 21 days of  
14 filing with Court. Defendant's motion does not meet the requirements of  
15 Rule 11 which states "but shall not be filed with or presented to the  
16 court unless, within 21 days after service of the motion" defendants  
17 exhibit A is part of the motion thus the motion as whole fails to  
18 properly provide a 21 days of statute of limitation prior to filing  
19 which designed by rule writer as a "safe harbor" governing the rule 11.  
20 Therefore, Motion shall be considered moot and hearing vacated.  
21 Defendant shall be sanctioned and plaintiff be awarded for fess and  
22 costs for opposing this motion prior to trial.  
23

24  
25 Defendant after is sanctioned, certainly is welcomed to make  
changes. However, must serve plaintiff again with changes made, then

1 wait 21 days prior to filing it with the District Court. Plaintiff had  
2 objected in advance to any changes or modifications in a letter dated  
3 February 06, 2004. Thus plaintiff did not wave any modification. This  
4 objection is Herewith attached as exhibit (1). Plaintiff points out  
5 that defendant had planned this out thru-out this litigation of  
6 bringing a sanction motion just prior to trial by compressing their  
7 multiple pleadings in one caption, making it look like as less filings  
8 with District Court.  
9

10  
11 For instance on December 24, 2003 Defendant files a document under  
12 1 caption with 3 separate pleading and counts it as one in their rule  
13 11 that confusing multiple pleading caption states. "Defendant  
14 Continental Micronesia Inc's Reply Memorandum in support of its Motion  
15 to Strike Plaintiff's Unauthenticated Evidence; Defendant's Memorandum  
16 in Opposition to plaintiff's Cross-Motion to Strike; and Defendant's  
17 Motion to Strike Affidavit of Tony H. Ashtiani and Attached Exhibits 1-  
18 55, filed on December 19, 2003". This caption is misleading and  
19 plaintiff had responded to each pleading pursuant to Local Rule 7.1.  
20

21 ("The Court has sufficient discretion to take account of the  
22 special circumstances that often arise in pro se situations").  
23 Defendants Rule 11 motion is ill-served and is abusive of power by a  
24 large law firm and corporation which continuously wrongs the common man  
25 as pro se litigants that are preparing for trial.

1 Defendant here, asking the Court to sanction Ashtiani whom has  
2 spirit to stand when wronged because corporation ability is hampered in  
3 order to continue to harm those economically disadvantage pacific  
4 islander and others like Ashtiani.

5  
6 Defendants motion is groundless with frivolous allegation based on  
7 fabricated factual dispute as evident through their exhibit A and  
8 captions asserted therein, defendant on numerous occasion has even  
9 deprived plaintiff of timely and proper service by burdening plaintiff  
10 by directing him to go to District Court to make copies of their  
11 pleadings and when it was to be served with Rule 11 motion, I was  
12 called to come to their office to pick up their motion such as this  
13 one.  
14

15  
16 As the Ninth Circuit has stated, "the [1983] amendments' major  
17 purposes were the deterrence of dilatory or abusive pretrial tactics  
18 and the streamlining of litigation." Id. (quoting Golden Eagle Distrib.  
19 Corp. v. Burroughs Corp., 801 F.2d 1531, 1536 .... Therefore, defendant  
20 may not use Rule 11 as a chilling effect upon pro se litigants.  
21

22 Plaintiff has not engaged in similar conduct in other litigation  
23 accordingly, there is no pattern or practice. On other hand, Ashtiani  
24 continuously thinking about his case, sincerely in attempt to provide  
25 the District Court with pleadings that is clear to understand, at times

1 plaintiff does not comprehend some legal languages and error is made  
2 thus amendments are filed.

3  
4 Defendant has continuously filed motion to waste time as  
5 diversionary tactic and taking advantage of the pro se plaintiff.  
6 Zaldivar v. City of Los Angeles, 780 F.2d 823 (9<sup>th</sup> Cir.1986) (reversing  
7 sanctions for frivolous filing under Rule 11).

8  
9 Accordingly, plaintiff humbly prays and respectfully asks  
10 Honorable chief Judge John S. Unpingco to deny defendant's motion and  
11 to instead sanction the defendant for harassing this plaintiff just  
12 before trial to make him use his time responding to this unwarranted  
13 rule 11 motion that fails to meet the Rule and filed in bad faith by  
14 defendant Continental Airlines and it lawyers, the Carlsmith firm.  
15

16  
17 **Respectfully submitted,** This 18<sup>th</sup> day of February 2004  
18

19 Tony H. Ashtiani  
20   
21

22 Pro se, plaintiff  
23  
24  
25

Tony H. Ashtiani  
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February 06, 2004

**CARLSMITH BALL LLP**  
Ms. Elyze McDonald  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue  
Hagatna, Guam 96932-5027

**Re: Motion hearing**

**In District Court of Guam CV. 02-00032**

Dear Attorney Ms. McDonald and Attorney Mr. Ledger.

Thank you for your letter dated February 4, 2004, for your convenience herewith attached.

Plaintiff objects to any alteration or modification made by defendant to the motion served upon plaintiff on Jan 22, 2004, (as stated in your letter dated February 04, 2004). Thus, if CMI elects to do so, defendant is required to follow the statute of limitations in Pursuant to Fed Rule Civ. P. Rule 11 which does not exclude Rule 5.

Plaintiff filed his pleadings and motions in opposition based on concrete and legitimate evidence supported by applicable Local Rules, Fed .R of Evid and related case laws before the District Court. My briefs are products of your client's not sent look alike emails with no reply, exhibits and manufactured documents unworthy of belief. Litigation such as this, one must call it as he sees it.

I am certain that you find my pleadings very interesting because defendant failed to inform you of their fabricated documents generated in anticipation of EEOC investigation. Perhaps, defendant McKinzie should have informed senior in house counsel and you about his exhibits from corner to corner. I am certain attorneys of record would have advised him not to attach it to his affidavits nor file it with U.S. District Court.

**RECEIVED**  
**CARLSMITH BALL**

Date: Feb. 6, 2004  
Time: 3:34 P.M. By: UG

EXHIBIT

"1"

Page 2 Of 2

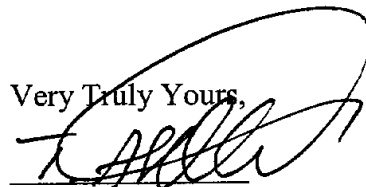
Letter to Attorneys of record (CMI) CV:02-00032

February, 06, 2004.

The filing of a motion for sanction and its timing is itself subject to the requirements of the rule and can lead to sanctions. Further more, I am not interested in any hearing regarding CMI's Motion unless District Court sees fit for such hearing ORDERED by Honorable Chief Judge John S. Unpingco.

Dated this 6<sup>th</sup> day of February 2004.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Tony H. Ashtiani', written over a horizontal line.

Tony H. Ashtiani

# CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

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WWW.CARLSMITH.COM

T. Ashtiani  
Feb. 4, 2004  
T. Ashtiani  
13:00

DIRECT DIAL NO.

EMCDONALD@CARLSMITH.COM

February 4, 2004

Mr. Tony H. Ashtiani  
Post Office Box 12723  
Tamuning, Guam 96931

Re: Tony Ashtiani v. Continental Airlines, Inc.  
Civil Case No. CV02-00032

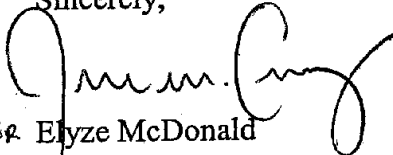
Dear Mr. Ashtiani:

This letter regards the Rule 11 Motion that Continental served you by mail on January 21, 2004, and personally on January 22, 2004.

First, Continental hereby notifies you that it will include two of your latest filings (both filed after Continental served its Rule 11 Motion on you), Request for Issuance of Order filed January 26, 2004, and Amended Request for Issuance of Order filed January 29, 2004, as part of its Motion. Continental believes these two requests are unwarranted, without legal foundation, and abusive, just like all other filings listed in the Rule 11 Motion.

Second, Continental will seek to have this Motion be heard before the Court on March 12, 2004. Please indicate to me by **Friday, February 6, 2004** (Guam time) if you agree with this date, or if you propose an alternative hearing date, as long as the proposed date is after March 8, 2004, as I will be unavailable until then.

Lastly, Continental reminds you that you must withdraw or correct the pleadings listed in its Rule 11 Motion, and the two pleadings mentioned above, by February 11, 2004. If you fail to do so, Continental will file its Motion and seek a full award of sanctions and attorneys fees.

Sincerely,  
  
For Elyze McDonald

EJM/jmc  
4841-5213-4144.1.013280-00079

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